

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**CHERYL L ROQUET**  
Claimant

**APPEAL NO. 08A-UI-08551-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COVENANT MEDICAL CENTER**  
Employer

**OC: 07/20/08 R: 03  
Claimant: Respondent (2R)**

Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 18, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 8, 2008. Claimant participated. Employer participated through Todd Hoyer, clinic director, and Kris Marmie, human resources associate.

**ISSUE:**

The issue is whether claimant quit the employment without good cause attributable to the employer and if so, whether she is overpaid benefits as a result.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time (36 hours per week) LPN office nurse from September 1, 1997 until September 15, 2008 when she quit. Her last day of work was May 16, 2008 and on May 19 she began a personal leave of absence through August 15 to try to find another job within the system. That 90-day leave was extended another 30 days for a job search and her supervisor Hoyer told her on September 15 that she must return to her former position or be separated from employment. Claimant opted not to return. She took the leave primarily because of her frustration with her only coworker Andrea who caused claimant to have extra work by arriving tardy, being absent frequently, not returning patient and attorney phone calls in a timely manner, taking personal phone calls at work, and mishandling paperwork. The office duties were normally handled by two nurses. While she did not believe Hoyer was responsive to these concerns, employer was taking disciplinary action against Andrea but could not discuss the personnel issues with claimant. Hoyer was also attempting to find additional help for the office and was able to do so shortly after claimant went on leave when another physician's nurse, Gail, worked part-time. Andrea left the employment on September 11 and claimant was aware of her departure when she declined to return to her job on September 15. Although claimant said she "mentally could not go back" she did not seek medical care or a medical opinion and based her decision not to return on other "coworkers" in

the building, even though they did not work in that office suite. Continued work was available at any time during the leave and through September 15, 2008.

Claimant applied for 15 positions during the leave of absence but some required evenings or weekends, for which she declined to make herself available. The others required specific experience as a medical secretary or billing training in spite of how other employees in the building may have come by their jobs.

Claimant has received unemployment benefits since filing a claim with an effective date of July 20, 2008.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(3), (6), (21), (22) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (3) The claimant left to seek other employment but did not secure employment.
- (6) The claimant left as a result of an inability to work with other employees.
- (21) The claimant left because of dissatisfaction with the work environment.
- (22) The claimant left because of a personality conflict with the supervisor.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Claimant's decision to quit rather than return to her job, even after Andrea's departure, and her general dissatisfaction with the work environment and her supervisor were not good cause reasons attributable to the employer for leaving. Benefits are denied.

Iowa Code § 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

Because claimant's separation was disqualifying, benefits were paid to which claimant was not entitled. The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3(7). In this case, the claimant has received benefits but was not eligible for those benefits. The matter of whether the overpayment should be recovered under Iowa Code § 96.3(7)b is remanded to the Agency.

**DECISION:**

The September 18, 2008, reference 01, decision is reversed. Claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. Claimant is overpaid benefits in the amount of \$2,625.00 (this is the same figure that applies to the ineligibility and overpayment decisions in appeal numbers 08A-UI-08473 and 08474-L-T).

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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